

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5244 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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SHIVANI SIZERS PVT LTD

Versus

UNION OF INDIA

Appearance:

Ms. Amrita Thakore for MR MIHIR H JOSHI
for Petitioners.

MR DN PATEL, Sr. Standing Counsel for Respondents.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 07/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Rule. Mr. D.N. Patel, learned Senior Central Government Standing Counsel waives service of Rule for the respondents.

2. What is challenged in this petition under Article 226 of the Constitution is the order dated 31st January 2002 passed by the CEGAT, Mumbai, requiring the petitioners to predeposit Rs. 16,00,000/= towards duty and penalty and Rs. 1,00,000/= towards the penalty imposed on the Director of the petitioner-company.

3. Ms. Amrita Thakore, learned counsel for the petitioners has submitted that the Tribunal has passed the impugned order by proceeding on the basis of the finding that the petitioner, a 100% Export Oriented Unit sold in market 89310 Kgs. of polyester yarn which it imported duty free on the ground that it would be used in the manufacture of textile yarn to be exported and that the Commissioner's order relied on the stocktaking conducted by the officer showing a shortage and the statements of the Directors, Asharaf Rajwani and authorised person Jitendra Shah. Ms. Thakore submits that the petitioners have a strong prima facie case and that the Tribunal has not considered the relevant facts or even the prima facie case pointed out. She has invited our attention to the figures given in the show cause notice [Pages 11 and 12 of the Paper Book] and submitted that the petitioners have an arguable case which needs to be looked into at the final hearing of the appeal before the CEGAT, but in the meantime the CEGAT has required the petitioners to pay the entire amount of duty as well as further substantial amount of penalty without appreciating the fact that the petitioners have already paid the duty of Rs. 18 lakhs during the investigation, which works out more than 70% of the duty demanded by the department. Ms. Thakore has further pointed out that the petitioners are suffering economic hardship and that the petitioner unit is running into losses for the last more than 4 years. Reference is also made to the Balance Sheet for the accounting year 1998-99.

Reliance is also placed on the decision of the Calcutta High Court in Hooghly Mills Co.Ltd. vs. Union of India 1999 (108) ELT 637 (cal.) laying down the principle that expression "undue hardship" as used in Section 35F will cover a case where the appellant has a strong prima facie case and that the Tribunal is therefore required to consider both the factors, that is the prima facie case of the appellant and also the undue

economic hardship. It is, therefore, submitted that having regard to the deposit of Rs. 18,00,000/= already made during the investigation, the Tribunal should have granted unconditional stay and should not have required the petitioner to predeposit any amount either towards duty or towards penalty.

4. On the other hand, Mr. D.N. Patel, learned Senior Standing Counsel for the respondents, submits that the Tribunal has considered the relevant facts for the purpose of deciding the stay application and no interference of this Court under Article 226 or 227 of the Constitution is called for.

5. Having heard the learned counsel for the parties, we are of the view that in the peculiar facts and circumstances of the case and having regard to the fact that the petitioner-company has already deposited Rs. 18 lakhs during investigation as against the duty demand of Rs. 26.23 lakhs and having regard to the economic hardship of the petitioner company which has been running into losses for the last 4 years, the Tribunal ought to have granted unconditional stay in favour of the petitioners without requiring the petitioners to predeposit any amount towards duty or penalty.

6. In view of the above discussion, the petition is allowed. The impugned order dated 31-1-2002 is quashed and set aside. The consequential order passed by the Tribunal, dismissing the appeals for non-compliance, is also set aside, and the Appeals No. C/804 to 806/01-Bom. are restored to the file of CEGAT, Mumbai. The CEGAT shall hear and decide the above appeals on merits without any order of predeposit.

Rule is made absolute with no order as to costs.

[M.S.Shah, J.]

rmr. [K.A. Puj, J.]